

D.P.U. 96-61-A

Investigation by the Department of Public Utilities on its own Motion to adopt a plan for addressing the limited number of exchange codes remaining in Eastern Massachusetts' 617 and 508 area codes.

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ORDER ON MOTIONS BY BELL ATLANTIC NYNEX MOBILE FOR CLARIFICATION
AND/OR RECONSIDERATION, NYNEX FOR CLARIFICATION AND
RECONSIDERATION AND CELLULAR ONE FOR CLARIFICATION

I. INTRODUCTION

On January 23, 1997, the Department of Public Utilities ("Department") issued its order to implement a geographic split of both the 617 and 508 area codes. Area Code Relief, D.P.U. 96-61 (1997) ("Order"). In its Order, the Department also denied a request to permit the grandfathering of wireless customers and reaffirmed its dialing plan directives as delineated in Interchangeable NPA, D.P.U. 93-45 (1993). Order at 16-18.

On February 11, 1997, Bell Atlantic NYNEX Mobile ("BANM") filed a Motion for Clarification and/or Reconsideration of the Department's Order relative to the grandfathering of wireless customers. Similarly, on February 12, 1997, Cellular One filed a Motion for Clarification of the Department's finding relative to the grandfathering of wireless customers. As part of its Motion, Cellular One submitted an affidavit by Paul J. Saur, vice president of network operations for Cellular One.¹ The Attorney General of the Commonwealth ("Attorney General") and AT&T Communications of New England, Inc., and Wireless PCS, Inc. d/b/a/ AT&T Wireless Services (collectively, "AT&T") filed responses in support of BANM and Cellular One's Motions.

On February 12, 1997, New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX") filed a Motion for Clarification and a Motion for Reconsideration. Specifically, NYNEX seeks clarification of the Department's finding relative to pocket areas

¹ Cellular One did not request that the Department reopen its investigation to consider new evidence submitted in Mr. Saur's affidavit and therefore, this information will not be considered by the Department. See 220 C.M.R. 1.11(8).

created by the geographic split and reconsideration of the Department's finding relative to dialing patterns established as a result of the geographic split. NYNEX filed an addendum to its Motion for Reconsideration and subsequently filed an affidavit by Thomas J. DeSisto, NYNEX's managing director, to correct errors in the addendum. New England Cable Television Association, Inc. ("NECTA") filed a response to both of NYNEX's motions for clarification and reconsideration. MCI Telecommunications Corp. ("MCI") filed an Opposition to NYNEX's Motion for Reconsideration ("MCI Response"), AT&T filed a memorandum in opposition to NYNEX's Motion for Reconsideration. Moreover, AT&T filed a Motion to Strike the Addendum to NYNEX's Motion for Reconsideration and the affidavit of Mr. DeSisto. Finally, the Attorney General filed a response to both of NYNEX's motions.

II. STANDARDS OF REVIEW

A. Reconsideration

The Department's Procedural Rule, 220 C.M.R. ' 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not

attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

B. Clarification

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

III. GRANDFATHERING OF WIRELESS CUSTOMERS

A. Background

In the Order, the Department found that grandfathering wireless customers presents a number of technical problems because (1) the sharing of exchange codes between landline and wireless customers may require a "take-back" of numbers from the exchange codes shared by wireless and landline customers and (2) additional system modifications to the interconnections for landline and wireless carriers could result in additional costs and delay of area code relief. Order at 17-18.

B. Positions of the Parties

1. BANM

BANM requests clarification on whether the Department intended to allow wireless customers who are served by a Type II interconnection, and thus do not share exchange codes with landline customers, to retain their existing area codes (BANM Motion at 1). BANM argues that the technical problems that the Department states as its reasons for denying the grandfathering of wireless customers relate only to Type I customers (id. at 2). BANM notes that NYNEX itself acknowledged that the technical problems of grandfathering would be minimized if only Type II customers were grandfathered (id. at 3-4). Nevertheless, BANM requests that if the Department intended to prohibit

grandfathering of all wireless customers, it should reconsider its decision (id. at 7).²

² As BANM did not formally move for reconsideration and presented no arguments in support of its assertion that the Department should reconsider, the Department will treat the filing only as a motion for clarification.

2. Cellular One

Cellular One also seeks clarification as to whether the Department intended to allow wireless customers to retain their existing area codes (Cellular One Motion at 2). Cellular One states that the Department did not specifically prohibit the grandfathering of all wireless customers and argues that the technical problems delineated by the Department in the Order do not relate to Type II wireless customers (*id.* at 2, 4-5).

3. Attorney General

The Attorney General recommends that the Department clarify its Order to state that it did not intend to prohibit the grandfathering of Type II wireless customers (Attorney General Response at 4).

4. AT&T

AT&T argues that clarification is appropriate because the Department's Order did not specifically and solely address grandfathering Type II wireless customers (AT&T Response at 2-3). AT&T argues that in the alternative, reconsideration is also appropriate because both Cellular One and BANM have brought to light previously unknown or undisclosed facts (*id.* at 3).

C. Analysis and Findings

As the Order is silent as to the disposition of grandfathering Type II wireless customers, we find that clarification is warranted. Accordingly, BANM and Cellular One's motions for clarification are hereby granted. Because Type II wireless customers do not share exchange codes with landline customers, the concerns raised by the Department in our Order do not apply. Therefore, the Department clarifies its initial decision and finds that the grandfathering

of existing Type II wireless customers is appropriate.

IV. POCKET AREAS

A. Background

Pocket customers are those customers physically located in a municipality included in one area code, but served out of an exchange included in another area code. Town of North Reading v. New England Telephone and Telegraph Company, D.P.U. 88-34 (1988). In the Order, the Department found that, "[a]ny pocket customers created as a result of the split must be realigned so that municipalities are served by the same area code." Order at 18.

B. Positions of the Parties

1. NYNEX

NYNEX seeks clarification of the Department's Order concerning the realignment of pocket customers in the 508/978 area code. NYNEX maintains that although the Department's Order specified realignment of pocket customers in the 617 area code, it made no similar requirement for the pocket customers in the 508 area code (id. at 2). NYNEX states that as a result of the boundary line ordered by the Department, approximately 3,393 pocket customers in the 508/978 area code would be created. Of those, 3,308 are located in the Wayland exchange (id.). NYNEX states that realigning the Wayland pocket customers will cost NYNEX \$1.75 million, and delay the implementation of area code relief (id. at 4). NYNEX notes that if the Department realigned the 508 area code to incorporate the Wayland exchange, the total number of pocket customers would decrease from 3,393 to 112.

NYNEX also requests that the Department reconsider the 617/781 boundary line to include the Watertown exchange in the 617 area code because a large portion of the Watertown

exchange, which has been placed in the new 781 area code, is geographically located between Cambridge and Newton, resulting in potential dialing confusion among customers (id. at 4 n.1).

2. Attorney General

The Attorney General supports NYNEX's Motion for Clarification (Attorney General Response at 2). The Attorney General also recommends that the Department realign the industry-proposed boundary line to allow Wayland to remain in the existing 508 area code (id.).

The Attorney General recommends that the Department determine which towns the 112 new pocket customers are located in, and provide those customers and towns an opportunity to be heard on the issue (id.).

3. NECTA

In response to NYNEX's Motion for Clarification, NECTA states that it interpreted the Department's Order as requiring the realignment of pocket customers in the 508 area code (NECTA Motion at 3). NECTA maintains that any alternatives concerning the inclusion of the Wayland exchange in the 508 area code should be the subject of a separate proceeding so as to avoid delay in the implementation of the geographic split (id. at 4).

C. Analysis and Findings

Because the Order was silent on the issue of realigning pocket customers in the 508 area code, the Department finds that clarification is warranted. It was the Department's intention for NYNEX to realign all pocket customers created by the 617/508 area codes split. With respect to realignment of the pocket customers in the 508/978 area codes, as a result of our Order we note that the Wayland exchange contains over 3,000 pocket customers. This was inadvertent. Although no party seeks reconsideration of this issue, the Department on its own

motion shall reconsider the area code boundary line for the Wayland exchange. To reduce the number of pocket customers, we find that the 508 area code shall include the Wayland exchange.

With respect to NYNEX's motion that the Department place the Watertown exchange in the 617 area code, we find that NYNEX has not met its burden to establish that reconsideration of the location of the Watertown exchange is appropriate. The Department stated that it realigned the 617 area code so that there would be (1) more equitable portions of access lines assigned to the new area code, (2) the fewest pocket customers, (3) maximization of socioeconomic factors, and (4) reduced cost to NYNEX. Order at 18-19. NYNEX failed to demonstrate extraordinary circumstances regarding the Watertown exchange that warrant modification of the decision based on our original criteria. In addition, NYNEX failed to establish that the new information contained in the addendum constituted previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered.³

³ As the Department has denied NYNEX's motion for reconsideration without considering the addendum, we find that the Motions to Strike NYNEX's addendum to its motion for reconsideration and the affidavit of Mr. DeSisto are moot. However, even if the Department had considered the addendum and the affidavits of Mr. DeSisto, the facts therein indicated that a greater number of pocket customers

would have resulted from placing Watertown in the 617 area code than in the 781 area code.

V. DIALING PATTERNS

A. Background

In the Order, the Department found that NYNEX must comply with the dialing patterns previously established in Interchangeable NPA. Order at 16-17 n. 10. Currently, customers dial 7 digits for local calls within an area code, 10 digits for local calls between area codes and 1+ 10 digits for all toll calls. D.P.U. 93-45.

B. Positions of the Parties

1. NYNEX

NYNEX seeks reconsideration regarding dialing patterns stating that the realignment of the 617/781 boundary creates a previously undisclosed dialing pattern which will result in substantial customer confusion and an increase in dialing errors (NYNEX Reconsideration Motion at 3). Additionally, NYNEX argues that the dialing patterns created by the boundary realignment may lead to potential "code conflict" in the future with the introduction of additional area codes (id.). In order to simplify dialing patterns and minimize customer confusion, NYNEX proposes that all calls within a customer's area code should be dialed on a seven-digit basis and all calls, local and toll, beyond a customer's area code should be dialed on a 1+ 10-digit basis (id. at 6-7). NYNEX recognizes that its proposed dialing pattern will eliminate the "1+ " toll indicator, but argues that optional calling plans minimize the usefulness of a toll indicator, and its dialing method proposal will better accommodate the addition of new area codes (id. at 7-8).

2. Attorney General

The Attorney General argues that NYNEX's Motion for Reconsideration should be

denied because NYNEX has not provided any previously unknown or undisclosed facts that would have a significant impact upon the Department's decision (Attorney General Response at 2).

3. AT&T

AT&T argues that NYNEX's Motion for Reconsideration should be denied because it merely restates arguments and attempts to reargue issues already considered and decided in the case (AT&T Dialing Pattern Response at 5). Moreover, AT&T states that NYNEX's reconsideration motion should be denied because it does not present previously unknown or undisclosed facts, and does not identify any mistake or inadvertence on the part of the Department (id. at 5-6).

4. MCI

MCI argues that NYNEX has not met the Department's standard of review for a motion for reconsideration (MCI Response at 1). MCI states that NYNEX's reconsideration motion is an inappropriate attempt to reargue the Department's well-settled position on dialing patterns, and therefore should be rejected (id. at 2).

5. NECTA

NECTA argues that NYNEX's Motion for Reconsideration is not supported by previously unknown or undisclosed facts (NECTA Motion at 2). NECTA claims that NYNEX's repeated efforts to eliminate toll indicators are inappropriate (id.).

C. Analysis and Findings

The Department established its current dialing plan in Interchangeable NPA. In the Order, the Department reaffirmed its commitment to this dialing plan, and ordered NYNEX to

fully comply with the directives contained therein. Order at 16-17 n.10. NYNEX has not met its burden to establish that reconsideration is appropriate, and therefore, the motion is hereby denied.

VI. ORDER

After due consideration, it is

ORDERED: That the Motions for Clarification filed by Bell Atlantic NYNEX Mobile and Cellular One relative to the grandfathering of existing Type II wireless customers are hereby GRANTED; and it is

FURTHER ORDERED: That the Motion for Clarification filed by New England Telephone and Telegraph d/b/a NYNEX on the issue of the realignment of pocket customers is hereby GRANTED; and it is

FURTHER ORDERED: That the Motion for Reconsideration filed by New England Telephone and Telegraph d/b/a NYNEX is hereby DENIED; and it is;

FURTHER ORDERED: That the 508/978 area code boundary be realigned so that the Wayland exchange is incorporated into the 508 area code.

By Order of the Department,

John B. Howe, Chairman

Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).